IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 9467 of 1998

For Approval and Signature:

HON'BLE MR.JUSTICE K.S.JHAVERI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

VA VADUKAR

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 9467 of 1998

MR AJ SHASTRI for Petitioner No. 1-3

GOVERNMENT PLEADER for Respondent No. 1

MR SA DESAI for Respondent No. 2

RULE SERVED BY DS for Respondent No. 3

CORAM : HON'BLE MR.JUSTICE K.S.JHAVERI

Date of decision: 25/08/2004

ORAL JUDGEMENT

1.1 The petitioner, by way of this petition, has sought for a direction to the respondents-authorities to implement the revision of pay prescribed pursuant to the recommendations of the 5th Pay Commission and to place the petitioners in the requisite payscale granting all consequential benefits.

2.1 According to the petitioners, they were working with the respondent-Gujarat Agricultural University which is amenable to writ jurisdiction of this Court in view of the fact that the respondent-University is an autonomous body getting 100% grant from the State Government, and hence, the respondent-authorites are bound by the Act and the Rules and they cannot discriminate the employees without any reasons.

2.2 It is the case of the petitioners that they had applied for the post of Executive Engineer in the payscale of Rs.1100-1600 pursuant to an advertisement published by the respondent-authorities on 10th October, 1993, called for an interview, selected and appointed to the said post in the year 1984 in the payscale of Rs.1100-1600 after following the due procedure as prescribed under the provisions of Statute 41 of the Act. Later on, while implementing the 4th Pay Commission, the petitioners had been fixed in the payscale of Rs.3000-4500 whereas while effecting pay revisions in 1998 pursuant to the recommendations of the 5th Pay Commission, the petitioners pay was not revised and the petitioners were deprived of his right to be placed in the payscale of Rs.10,000-15,200 on the ground that there is no approval from the State Government though the Executive Engineers working in other departments of the State Government have already been granted such revision of pay, and hence, the present petition.

3.1 The respondents have filed their reply controverting the averments made in the petition. It is the say of the respondents that the petitioners are not entitled to the benefits claimed by them as the respondent-University is not competent enough to grant pay revision without the previous sanction of the Government. According to the respondent-University the permission to grant pay revision though was granted to the University vide communication dated 9th April, 1980 the same came to be abrogated by a subsequent communication dated 9th May, 2000.

4.1 Now, in the present case, the petitioners have claimed the benefits prior to the year 2000, and therefore, the communication dated 9th April, 1980 will

be applicable to the case of the petitioners and the stand taken by the respondents that for want of approval from the State Government the petitioners could not be granted the said benefit cannot be accepted.

4.2 Apart from that, Mr. Shastri, learned Counsel for the petitioners has drawm my attention to the decision of this Court dated 02-03/09/2003 (Coram: Akshay H.Mehta, J.) in Special Civil Application no.6131/1995, where in a matter similar to the present one, this Honourable Court has directed the respondents to pay all the arrears to the petitioner on account of the salary as well as the retiral benefits together with interest. The said judgment was carried in appeal by the State Government being LPA no.194/2003 which came to be dismissed on 17th March, 2004.

4.2 Mr. Shastri has also relied on the decision dated 28-11-2000 rendered by the Honourable the Apex Court in the case of STATE OF PUNJAB AND ANOTHER V. SARDARI LAL AND OTHERS reported in (2003) 10 SUPREME COURT CASES 253 wherein at paragraphs 3 and 4 of the judgment, it has been held that:

"The provisions of Section 23 and 25 of the Guru Nanak Dev University Amritsar Act cannot be construed to have conferred the power on the State Government in the garb of controlling the funds which the State Government grants for the running of the University, to have a control over the internal administration of the University. The University is an autonomous body, and therefore, the State Government will not be entitled to interfere with the internal administration of the University notwithstanding the fact that the State Government is the funding body until and unless the University Statutes provide for the same or there is any Act of legislation conferring that power on the State Government. Even for the Haryana and Punjab Agricultural University, the power conferred under Section 10 of the Haryana and Punjab Agricultural Universities Act, on a plain reading cannot be held to be conferring power on the State Government to take any decision in the internal administration of the University which the Statute itself does not provide."

5.1 Taking into consideration the observations of the learned Single Judge in SCA no.6131 of 1995, more particularly, at paras 5 and 6, as also, keeping in mind the observations made by the Apex Court cited above, I am of the view that the petitioners are entitled to the benefit of pay revision as prescribed by the 5th Pay

Commission as claimed by him and he is required to be placed in the corresponding payscale of Rs.10,000-15,2000.

6.1 In view of the foregoing discussion, the petition is allowed. The respondents are directed to pay all the arrears to the petitioners on account of revised pay as well as the retiral benefits together with interest at the rate of 9% from 1st January, 1996 till the payment treating the petitioners as placed in the payscale of Rs.10,000-15,200 with effect from 1st January, 1996. The payment as directed be paid to the petitioners within four months from today. Rule is made absolute accordingly.

(K.S.Jhaveri,J.)

stanley-ksj.